

FCC Received April 3, 1995 @ 2:45 p.m.

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1 TRANSCRIPT OF PROCEEDINGS

2 Before the
3 FEDERAL COMMUNICATIONS COMMISSION
4 Washington, D.C. 20554

5 IN THE MATTER OF: MM DOCKET NO. 94-11

6 TELEPHONE AND DATA SYSTEMS, INC./
7 WISCONSIN RSA No. 8, INC./
8 UNITED STATES CELLULAR OPERATING COMPANY

9 Wisconsin 8 (Vernon) Rural Service Area DOCKET FILE COPY ORIGINAL

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25 DATE OF HEARING: March 7, 1995

VOLUME: 3

25 PLACE OF HEARING: Washington, D.C.

PAGES: 65 - 241

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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

-----)
 In re Application of)

TELEPHONE AND DATA SYSTEMS, INC.)

MM DOCKET NO. 94-11
 File No.
 10209-CL-P-715-B-88

For facilities in the Domestic)
 Public Cellular Telecommunications)
 Radio Service on Frequency Block B,)
 in Market 715, Wisconsin 8 (Vernon),)
 Rural Service Area)
 -----)

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The above-entitled matter came on for admissions session pursuant to notice before Judge Gonzalez, at 2000 L Street, N.W., Courtroom 4, Washington, D.C., on Tuesday, March 7, 1995 at 10:05 a.m.

APPEARANCES:

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10 Coon Valley Farmers Telephone Company, Inc., Hillsboro
11 Telephone Company, LaValle Telephone Cooperative, Monroe
12 County Telephone Company, Mount Horeb Telephone Company,
13 North-West Cellular, Inc., Richland-Grant Telephone
14 Cooperative, Inc., Vernon Telephone Cooperative, and Viroqua
15 Telephone Company (collectively the "Settlement Group"):

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On behalf of Arthur V. Belendiuk:

Pro se

On behalf of Wireless Telecommunications Bureau:

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I N D E X

	<u>TDS/USCC</u>	<u>Identified</u>	<u>Received</u>
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25	Hearing Began: 10:05 a.m.	Hearing Ended: 3:50 p.m.	

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P R O C E E D I N G S

1
2 JUDGE GONZALEZ: The date is March 7th, the time is
3 10:05 in the morning, this is an admissions session in the
4 application of -- regarding the matter of the application of
5 Telephone and Data Systems, Inc. for facilities in the
6 Domestic Public Cellular Communications Radio Service on
7 Frequency Block B, in Market 715, Wisconsin 8 (Vernon), Rural
8 Service Area. Would the parties please enter their appearance
9 beginning on my left, sir.

10 MR. EMMONS: Nathaniel F. Emmons, Your Honor,
11 representing Telephone and Data Systems, Inc. and my
12 colleague, Andrew Weissman of my firm is with me.

13 MR. SCHNEIDER: Representing USCC, United States
14 Cellular Corporation, R. Clark Wadlow of Sidley and Austin,
15 joining me is Mark D. Schneider and Christine A. Liberzagni
16 (Phonetic).

17 MR. KIRKLAND: For intervener SJI, Inc., James A.
18 Kirkland.

19 MR. BELENDIUK: For Arthur Belendiuk, Your Honor,
20 I'm representing myself this morning.

21 MS. LANCETTI: Luisa Lancetti representing Louisiana
22 CGSA, Inc.

23 JUDGE GONZALEZ: I'm sorry, again.

24 MS. LANCETTI: Luisa Lancetti representing Louisiana
25 CGSA, Inc.

1 MR. HARDMAN: Thank you, Kenneth E. Hardman of Moir
2 and Hardman representing the Wisconsin Settlement Group.

3 MR. HARDMAN: Joseph Weber representing the Wireless
4 Telecommunications Bureau.

5 JUDGE GONZALEZ: Thank you, before we were on the
6 record, Ms. Lancetti asked that be permitted to make a
7 statement on the record, please.

8 MS. LANCETTI: I just wanted to again advise the
9 Court that Bell South, the owner of LCGSA has reached an
10 agreement in principle GS to resolve a number of pending
11 disputes including disputes before the Commission that were
12 also disputes in civil litigation. The parties are working
13 hard on a definitive settlement agreement which they hope to
14 finalize and execute within the next 30 days. They will then
15 file the request for approval -- with this Court and withdraw
16 from this proceeding.

17 JUDGE GONZALEZ: All right, if the Bureau could let
18 me know how they feel about it by phone, that would sort of
19 expedite matters because the time is of the essence. All
20 right, Mr. Schneider, I believe you have something to say as
21 well?

22 MR. SCHNEIDER: Yes, sir, yes, Your Honor, I have
23 spoken with Robert Hawkins, counsel for Port Cell this morning
24 and he's authorized me to speak for both the United States
25 Cellular Corporation, Telephone and Data Systems, Inc. and his

1 client, Port Cell, to report to you that we have reached a
2 definitive agreement with Port Cell that will involve their
3 withdrawal from the proceeding. That request is a simp -- a
4 reimbursement of their expenses in this proceeding that I
5 believe amounts to something less than \$40,000. We have
6 executed the definitive agreement and his instructions to me
7 this morning were that he was sending over to my office his
8 client's signed copies of those documents which we will put
9 together with a joint request as soon as time permits and
10 file, it is my hope, by the end of the day tomorrow.

11 JUDGE GONZALEZ: Okay, and again, I would appreciate
12 if the Bureau would let me know as soon as possible what their
13 input is on the proposed settlement agreement. All right,
14 what the suggestion -- pardon me --

15 MR. SCHNEIDER: I'm sorry, Your Honor, Mr. Hardman
16 also -- and I have also wanted to put on the record what we
17 advised you of off the record which is the fact that
18 discussions are on-going between the last remaining private
19 party in this litigation that would resolve the disputes in
20 this market and at such time -- we intend to bring those talks
21 to a close by the end of the week, by Friday, and it is our
22 hope that at that point we'll be able along with the Bureau to
23 come in and recommend to you an expedited method of resolving
24 the issues in this case and we will so advise you of the
25 progress and hopefully conclusion of that by the end of the

1 week.

2 JUDGE GONZALEZ: All right, and that's the group
3 known collectively as the Settlement Group?

4 MR. SCHNEIDER: Correct.

5 JUDGE GONZALEZ: And I also advised the parties off
6 the record that obviously time is of the essence since the
7 hearing is scheduled to start on the 14th but if they feel it
8 would be helpful to resolve these matters, I would certainly
9 be prepared to meet with the parties on the afternoon of the
10 13th which would precede the beginning of the hearing on the
11 14th, you can let me know as soon as possible whether that
12 would be helpful and then we can arrange to have a reporter
13 and see if we can't move that process along. Is there
14 anything further before we begin with, at the suggestion of
15 the parties, TDS's exhibits?

16 MR. EMMONS: Just one preliminary housekeeping
17 matter, Your Honor --

18 JUDGE GONZALEZ: Yes.

19 MR. EMMONS: -- there is a typographical error on
20 Volume 2B of the TDS/USCC exhibits and we had intended to redo
21 the cover page to eliminate that error but that somehow didn't
22 get done and so I'd like to advise everybody of what the
23 typographical error is and suggest that people might want to
24 simply make the correction in pen or pencil on their own
25 copies.

1 JUDGE GONZALEZ: Yeah, I think because of the volume
2 of materials, we're going to have to be very specific and take
3 our time with indicating exactly what we're -- what our
4 attention is to be directed to.

5 MR. EMMONS: Yes.

6 JUDGE GONZALEZ: So would you repeat that again,
7 what is the volume again?

8 MR. EMMONS: Yes, sir, Volume 2B.

9 JUDGE GONZALEZ: Volume 2B, okay, I think for my
10 benefit, no one else's, I --

11 MR. EMMONS: I could perhaps help you locate it in
12 your box, Your Honor.

13 JUDGE GONZALEZ: Yeah, I am a little puzzled by the
14 -- it is this one, this is -- no, this is --

15 MR. EMMONS: No, it's going to be part of Exhibit 2,
16 Your Honor.

17 JUDGE GONZALEZ: Oh, I see, Exhibit 2, yeah, I see
18 it right here.

19 MR. EMMONS: Here it is right here, all right, there
20 you go.

21 JUDGE GONZALEZ: Okay.

22 MR. EMMONS: The error is on the cover page, the one
23 cover page --

24 JUDGE GONZALEZ: All right.

25 MR. EMMONS: -- below the bold print toward the

1 middle of the page where it currently says, TDS/USCC
2 Exhibit 1, Part 2 of 2 --

3 JUDGE GONZALEZ: Right.

4 MR. EMMONS: -- that should say, TDS/USCC Exhibit 2.

5 JUDGE GONZALEZ: Exhibit 2, all right, that
6 correction is made and the reporter will not that correction
7 as well.

8 MR. HARDMAN: Your Honor, I have one other
9 preliminary matter, I probably should have mentioned before we
10 got to the mechanics of the exhibit. I note that
11 Mr. Belendiuk who is a party to the proceeding and has
12 submitted direct testimony has before has entered his
13 appearance at the hearing this morning and his counsel who he
14 is represented by counsel in the proceeding, is not present
15 and I would certainly object to any statements by Mr.
16 Belendiuk on the record as part of this proceeding. He
17 certainly is entitled to be here and witness what goes on but
18 I would object to any attempt by him to make statements on the
19 record or to engage in any part of the proceeding.

20 JUDGE GONZALEZ: Well --

21 MR. BELENDIUK: Your Honor, I'm not planning to make
22 any statements but I think as a party I have a right should I
23 choose to but I will say I'm not planning to make any.

24 JUDGE GONZALEZ: Is Mr. -- will Mr. Crispin be here
25 at some point?

1 MR. BELENDIUK: No, I - as again, I was not planning
2 to participate and I can tell you that I'm not going to be
3 participating in it.

4 JUDGE GONZALEZ: Well, I think there could
5 conceivable be a problem if you do actively participate since
6 you are going to be a witness, I assume.

7 MR. BELENDIUK: Yes.

8 JUDGE GONZALEZ: Well, we'll have to deal with it in
9 the fact he gives -- makes no attempt to participate,
10 Mr. Hardman.

11 MR. HARDMAN: Very well, Your Honor.

12 JUDGE GONZALEZ: All right, we'll begin then, sir.

13 MR. EMMONS: Thank you, Your Honor, as a matter of
14 procedure, Your Honor, would you wish that we identify each of
15 the TDS/USCC exhibits or rather identify all of them first and
16 then begin to offer them or should we identify them one by one
17 and offer them as we identify them?

18 JUDGE GONZALEZ: It might just be easier just to go
19 ahead and identify one then offered because otherwise there's
20 just be an accumulation of exhibit books in front of us.

21 MR. EMMONS: Very well.

22 JUDGE GONZALEZ: So, we'll begin them with -- just
23 so we all are -- it's Volume 1A, right?

24 MR. EMMONS: Yes, Your Honor, Volume 1A and also 1B,
25 consist of TDS/USCC Exhibit 1, the Exhibit is the written

1 direct testimony of Arthur V. Belendiuk, consisting of
2 24 pages of written testimony with a covering declaration and
3 Attachments A through M to the written testimony.

4 JUDGE GONZALEZ: A through M?

5 MR. EMMONS: Yes, Your Honor.

6 JUDGE GONZALEZ: All right, it's identified this
7 date.

8 (Whereupon, the document referred to was
9 marked for identification at TDS/USCC
10 Exhibit No. 1.)

11 MR. EMMONS: And at this point, Your Honor, we would
12 offer TDS/USCC Exhibit 1 with it's attachments into evidence.

13 JUDGE GONZALEZ: Are there any objections?

14 MR. HARDMAN: Yes, Your Honor, and this is going to
15 be sort of a recurring theme to my objections to a lot of the
16 exhibits here. Throughout the direct testimony of the -- of
17 this party, there is a recurring theme of attempting to
18 reargue factual matters that were decided adversely to the
19 parties and the La Star proceeding as to control issues, as to
20 how the litigation was handled, communications back and forth,
21 who authorized who to do what and as I say, these matters were
22 decided adversely to the parties, you know, by the
23 Administrative Law Judge, twice by the Commission and are not
24 proper for reargument or retrial in this proceeding. So there
25 are a number of statements throughout each of the witnesses'

1 direct testimony that, you know, have that problem with it and
2 are combined with other statements, similar statements that
3 are purely argument and not proper direct testimony. So we
4 can talk about the general problem and then try to identify
5 all of the objectionable statements or if there is another way
6 you prefer to treat the issue, that's fine, too.

7 JUDGE GONZALEZ: Mr. Weber, do you join in that
8 objection?

9 MR. WEBER: Yes, I do, Your Honor, and I have
10 several objections I'll be making to various portions of the
11 written testimony although I do not object to the written
12 testimony as a whole.

13 JUDGE GONZALEZ: Mr. Emmons?

14 MR. EMMONS: Your Honor, first it's not clear to me
15 whether Mr. Hardman's objection is that testimony is really
16 argument rather than testimony of facts or whether his
17 objection is that TDS and US Cellular are collaterally estop
18 from offering into evidence the facts that are covered in the
19 testimony in the documents that are being offered. I think
20 it's the latter, it sounds to me like collateral estoppel
21 although Mr. Hardman didn't use that term. In that
22 connection, whether it's collateral estoppel or not, it seems
23 to me that the hearing designation order is dispositive of
24 this question. Paragraph 34 of the hearing designation order
25 made it very plain that the Commission felt that the record

1 from the previous hearing was insufficient to make any
2 determination of the issues that are designated here and I'd
3 like to quote just one or two sentences from Paragraph 34 that
4 makes that point very succinctly and clearly. It says, quote
5 "Knoxville alleges that no further proceedings are necessary
6 because the misrepresentations and lack of candor were made on
7 the record and that the Commission need only use the record to
8 make a determination of wrongdoing by USCC." We do not agree.
9 Because it is not clear from the record that USCC necessarily
10 engaged in misrepresentation or lack of candor, we believe a
11 further hearing on this issue is appropriate. Therefore, we
12 cannot make a determination that USCC made intentional
13 misrepresentations based only on the record now before us.
14 The Bill of Particulars filed by the Bureau and joined in by
15 the Settlement Group essentially makes the same point, in two
16 places, Your Honor, in Footnote 2 of the Bill of Particulars,
17 on Page 2 it says that the Bill of Particulars, quote, "is
18 meant to inform TDS of the areas in which the Bureau believes
19 there record in LaStar is insufficient to be able to make a
20 determination" end quote, and on Page 32 of the Bill of
21 Particulars, the Bureau states that the Bill of Particulars
22 lists instances in which, quote, "the Bureau believes there is
23 insufficient evidence in the LaStar record to determine
24 whether TDS misrepresented facts, lacked candor or otherwise
25 attempted to mislead the Commission" end quote. So we think

1 | that it's clear that the Commission has dispositively ruled on
2 | the point, the Commission wants a full record because the
3 | Commission designated this hearing because it didn't have a
4 | full record and a full record means a record of all the
5 | evidence and all the relevant facts, all the relevant
6 | communications, all the relevant questions of who authorized
7 | who to do what, and so forth. We are not intending -- it is
8 | not our intent to reargue the question of whether or not U.S.
9 | Cellular was in de facto control of LaStar, that we recognize
10 | is a legal question that was decided in the LaStar hearing and
11 | although that hearing is not quite completed, there's a
12 | pending petition for reconsideration, nonetheless, that's the
13 | legal issue that was tried there, we're not going to try that
14 | issue here. But we are going to try the question that is
15 | designated here which is whether there was a misrepresentation
16 | or a lack of candor which means whether or not U. S. Cellular
17 | and/or TDS and/or their witnesses or their employees and
18 | officers intended to deceive the Commission about anything and
19 | whether or not they believed that U. S. Cellular was in
20 | control of LaStar. Now, the very nature of this issue, the
21 | candor and misrepresentation issue, requires a full record
22 | because in order for there to have been a misrepresentation or
23 | a lack of candor, there must have been a false statement, an
24 | intentionally false statement and so the threshold
25 | determination that must be made in this proceeding is whether

1 U. S. Cellular believed that it controlled LaStar and that
2 question involves what did U. S. Cellular believe the facts
3 were. You can't determine that you have falsity of any
4 statements about who controlled LaStar without first
5 determining what U. S. Cellular believed were the facts about
6 who controlled LaStar. Now, all of the evidence that is
7 offered in TDS and U. S. Cellular's testimony is relevant to
8 U. S. Cellular's belief about what the facts were to the
9 extent that the evidence involves facts that the witnesses
10 knew, the relevant witnesses knew about then it's directly
11 probative of their own state of mind which in turn is the
12 essence of the candor and misrepresentation issue before us.
13 To the extent that the evidence involves facts that the
14 witnesses perhaps did not personally know at the time, it's
15 nonetheless admissible because it establishes the plausibility
16 of their belief. For example, the plausibility of the belief
17 that Mr. Belendiuk as counsel for LaStar was in charge of a
18 litigation, their belief that Mr. Belendiuk was not acting as
19 U. S. Cellular's counsel but rather was acting as LaStar's
20 counsel. Their belief, for example, that the majority
21 partner, SJI, had approved all of the recommendations that Mr.
22 Belendiuk brought to U. S. Cellular during the course of the
23 litigation and ultimately their belief that U. S. Cellular did
24 not control LaStar. All of the evidence either goes directly
25 to their state of mind on that or confirms the plausibility of

1 their belief of those facts and if this evidence is excluded,
2 Your Honor, we can't adequately defend ourselves because we
3 would be denied the right to put into evidence facts that are
4 directly relevant to the core element of the designated issue,
5 which is, as I say, U. S. Cellular's state of mind and its
6 intent and its motives. Now, with that said --

7 JUDGE GONZALEZ: How do we address the fact that the
8 Administrative Law Judge in that proceeding, the LaStar
9 proceeding, did make some findings of fact which we have to
10 assume the Commission has adopted, correct?

11 MR. EMMONS: Well, he did not make any findings of
12 fact, Your Honor, on what U. S. Cellular believed, and, in
13 fact, he was urged to in the proposed findings and conclusions
14 by the opposing parties in that case to find that U. S.
15 Cellular had lacked candor about statements that its officers
16 and employees had made and he declined to do so.

17 JUDGE GONZALEZ: Right, but you don't dispute the
18 fact that what findings of fact that he made have been
19 affirmed by the Commission?

20 MR. EMMONS: No, we do not dispute that and we're --

21 JUDGE GONZALEZ: And those will not be contradicted
22 in this proceeding.

23 MR. EMMONS: Well, they won't be contradicted, Your
24 Honor, but what -- but a wholly separate question is what the
25 U. S. Cellular people believe were the facts and what we will

1 establish, we think, is that although in the earlier hearing
2 it may have been found that Mr. Belendiuk as LaStar's counsel
3 -- or I'm sorry, as counsel for the partnership, was really an
4 agent of U. S. Cellular. We will establish that none of the
5 U. S. Cellular or TDS people believed that Mr. Belendiuk was
6 the agent of U. S. Cellular and that belief is absolutely
7 essentially relevant to the question of whether the statements
8 that U. S. Cellular made in the previous proceeding were
9 candid or not candid. So we have to be able to put in the
10 facts to show what they believe and what they didn't believe.

11 JUDGE GONZALEZ: Yes, Mr. Hardman, I'm just a little
12 puzzled by the nature of the objection. I haven't read
13 through his statement so, you know, I plead ignorance as to
14 actually what's contained therein, but how can we, as
15 Mr. Emmons has just mentioned, how can we determine state of
16 mind without at least probing into the minds of the witness
17 what he believed the facts to be at the time irrespective of
18 what the Administrative Law Judge and then the Commission
19 found the facts to be ultimately?

20 MR. HARDMAN: Well, the nature of the inquiry in
21 this case is such that when you -- and obviously USCC and TDS
22 are going to deny that they knew that there was anything
23 improper, they denied that they knew they were going to
24 control it, this is obviously self-serving and argumentative
25 testimony, it's their argument in the guise of testimony.

1 | What the Commission and the hearing designation order said was
2 | in the proper -- in the my view the proper interpretation of
3 | the hearing designation order is that, look at it, we have
4 | found a set of facts adversely to TDS and USCC. Now, we can't
5 | tell --

6 | JUDGE GONZALEZ: I can't agree that -- do you agree
7 | that the principal fact was that control rested in the
8 | Commission's mind and USCC not in SJI?

9 | MR. HARDMAN: That was the -- the primary -- that
10 | was the primary fact and there were a number of subsidiary
11 | facts that were related to that ultimate fact. Now, what the
12 | Commission is saying in the hearing designation order in my
13 | view is, we can't tell whether there was a deliberate
14 | misrepresentation or other intent to deceive on that issue.
15 | The record is unclear and the Judge didn't make the findings
16 | as Mr. Emmons noted, but the inquiry -- the evidentiary
17 | inquiry in this proceeding is not for the parties to make
18 | another evidentiary record that the fact was contrary to the
19 | Commission's findings but merely to offer either evidence in
20 | mitigation --

21 | JUDGE GONZALEZ: Specifically that there was no
22 | control, so I'm not going to reargue that point.

23 | MR. HARDMAN: Exactly and --

24 | JUDGE GONZALEZ: And that's not your intention, is
25 | it, Mr. Emmons?

1 MR. EMMONS: We're not going to, we're not going to
2 admit it but we're not going to deny as a legal conclusion
3 that the Commission's reached, we're not going to rate it.

4 JUDGE GONZALEZ: Yeah, or that it's not an issue
5 before us in any case.

6 MR. HARDMAN: Right, but through -- I'm sorry, but
7 throughout the direct testimony are just statements contrary
8 to that fact, that deny that fact, refuse to accept and said,
9 gee, I didn't know, nobody told me --

10 JUDGE GONZALEZ: Well, now, this proceeding assumes
11 that control rested in USCC. We are required to assume that -
12 -

13 MR. HARDMAN: And all the --

14 JUDGE GONZALEZ: -- and that, as far as I'm
15 concerned, is a fact, it's -- the Commission has accepted it
16 as a fact, ergo, I accept it as a fact. So the only thing
17 we're really going to be looking into is their state of mind
18 and I don't know how -- I mean, I don't know how we can
19 excluded testimony to the fact that we didn't believe that
20 there was control, I mean, do you see that as rearguing the
21 control issue?

22 MR. HARDMAN: It's -- well, the objection is
23 slightly different there because that is so obviously self-
24 serving that it shouldn't be admitted as --

25 JUDGE GONZALEZ: Well, unfortunately, I think when

1 we're looking into the state of mind, I don't know how we
2 cannot -- I mean, how would you propose we approach an
3 evaluation of a person's state of mind as to whether or not he
4 was lying, outright lying or being less than candid?

5 MR. HARDMAN: Testimony as to relevant facts related
6 to the incident, whatever it is, is fine but just as the
7 conclusory self-serving statement, gee, I didn't think or I
8 didn't know this or I didn't intend to deceive, that's just
9 pure argument and self -- that's not fact testimony related to
10 the issues of the case, that's just argument.

11 JUDGE GONZALEZ: Mr. Weber.

12 MR. WEBER: TDS proffers written testimony from
13 11 different witnesses here, only four of those witnesses are
14 actually TDS or USCC personnel or officials and I would agree
15 that their state of mind is relevant. However, as to the
16 other seven witnesses which are not TDS personnel or
17 officials, their state of mind as to whether or not there was
18 control I think is entirely irrelevant and I believe this will
19 become more evident as we're going through the various written
20 testimony and objections are proffered to certain sections of
21 that testimony. When one -- when a non-USCC official makes a
22 statement, I didn't think that there was a control problem,
23 that's not probative of any of the issues at hand whether or
24 not the TDS officials knew they were making misstatements to
25 the Commission, and I just believe it'll really be more

1 | evident as we go through each exhibit and -- I mean, I don't
2 | know if Mr. Hardman plans to object to an entire written
3 | statement or not, the Bureau does not to intend to object to
4 | any entire written statement. However, there are sections of
5 | each written statement we do have objections to.

6 | JUDGE GONZALEZ: Now, I guess the reason why I
7 | thought this might be helpful is if we could look at -- if we
8 | could sort of look at the evidence in more of a restrictive
9 | fashion we might eliminate some potential objections. In
10 | other words if we can agree at this point that the evidence
11 | will be looked at only for the state of mind of the person
12 | testifying because I think personally, I don't know how we can
13 | separate that from the issue, quite frankly, I just don't see
14 | how it can be done. If we're going to accuse these people of
15 | deliberately lying or failing to be candid, I mean, I think
16 | they have a right to offer their state of mind in some -- as a
17 | defense, whether or not it's credible is another issue or
18 | whether or not the testimony holds up under cross-examination,
19 | again, that's another issue. But I don't think that I can
20 | deny a witness who's been charged with a very serious, a very
21 | serious infraction, to let the Commission know exactly what
22 | his or her state of mind was at the time, I don't see how we
23 | can exclude that. So we will go ahead and start with the
24 | objections and hopefully as we handle a few of them maybe we
25 | can resolve later ones that are similar more rapidly.

1 MR. HARDMAN: Very well, Your Honor.

2 JUDGE GONZALEZ: I -- so we'll begin with the first
3 objection to Exhibit 1. Who would like to be heard?

4 MR. WEBER: I'll go ahead and go first, Your Honor.

5 JUDGE GONZALEZ: All right.

6 MR. WEBER: With Mr. Belendiuk's written testimony,
7 Exhibit 1, I first would move to strike Paragraph 10 on Page 5
8 as well --

9 JUDGE GONZALEZ: Just a minute, we'll have to take
10 our time here, all right, Paragraph -- the entire paragraph?

11 MR. WEBER: The entire paragraph, this paragraph
12 discusses efforts in order to get a bank letter and there were
13 no issues in the Bureau's Bill of Particulars regarding the
14 bank letter secured by TDS -- or by LaStar, rather.

15 MR. EMMONS: Your Honor, this evidence is offered to
16 show what activities and what interaction there was between
17 counsel for LaStar and the majority partner for LaStar in
18 certain work that was done on a LaStar application. One of
19 the questions raised by the hearing designation order -- or
20 one of the findings made earlier was that SJI had no
21 involvement, SJI being the majority partner, had no
22 involvement in virtually any of the activities that related to
23 the LaStar application and our witnesses, that is to say U. S.
24 Cellular people by your testimony you will see, believed that
25 SJI was involved and this evidence establishes that SJI was,

1 in fact, involved and therefore it corroborates and makes
2 plausible the claim to belief by the U. S. Cellular people
3 that SJI was involved. I heard, I think, Mr. Weber say that
4 there's a question of the credibility of the claimed belief,
5 or maybe it was Your Honor who said that, that one of the
6 issues would be whether the claims of U. S. Cellular's
7 witnesses that they didn't know something or that they did
8 know something is believable. One of the questions on whether
9 witnesses testimony is believable is what were the facts, is
10 the claim plausible. If the facts occurred, then the claimed
11 believe is plausible and so this evidence is relevant to show
12 the plausibility of the claimed state of mind of the U. S.
13 Cellular witnesses.

14 MR. HARDMAN: Your Honor, if I may --

15 JUDGE GONZALEZ: Do you join the objection?

16 MR. HARDMAN: I do, Your Honor, I think Mr. Emmons'
17 statement sort of underscored the problem that we were talking
18 about a moment ago on the -- which is recurring through the
19 evidence in this case. What Mr. Emmons said, and I believe
20 this is a direct quote is "that the evidence does, in fact,
21 show that SJI was involved in the LaStar application", that is
22 directly contrary to the findings of the Commission and the
23 Administrative Law Judge and what the party is trying to do is
24 to undercut the factual findings of the Commission and that is
25 a pure matter of estoppel, I mean, the testimony simply cannot

1 be heard to challenge those findings for whatever purpose. If
2 the parties want to testify in light of the facts as they were
3 adjudicated by the Commission and offer relevant and probative
4 testimony in light of that, fine, but to start the premise of
5 their case from the standpoint that they can reargue all the
6 factual matters and pretend that the Commission hasn't already
7 adjudicated them, is simply -- it throws that whole proceeding
8 out the window.

9 JUDGE GONZALEZ: But is it your opinion that the
10 Commission found that SJI was not involved in any capacity? I
11 mean, wasn't it more a question of control rather than just
12 minimal involvement?

13 MR. HARDMAN: No, it was more than that, Your Honor.

14 JUDGE GONZALEZ: I beg your pardon?

15 MR. HARDMAN: It was more than that, Your Honor,
16 that was one of the subsidiary findings that the Commission --
17 factual findings that the Commission used to buttress its
18 ultimate conclusion and it talked about these different
19 aspects related to --

20 JUDGE GONZALEZ: Is that your understanding as well,
21 Mr. Weber, that the Commission found that SJI was not involved
22 in any capacity in prosecuting this application?

23 MR. WEBER: I am not sure I could say they were not
24 involved in any capacity, but it is, indeed, correct to state
25 that the Commission found that there was no significant